

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 92-023-R - ORDER NO. 94-519 ✓  
JUNE 6, 1994

IN RE: Application of South Carolina Electric     ) ORDER  
      & Gas Company for Adjustments in the        ) ON  
      Company's Coach Fares and Charges,           ) REMAND  
      Routes, and Route Schedules.                 )

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Circuit Court Remand of the multiple appeals of South Carolina Electric & Gas Company (SCE&G or the Company), and the Women's Shelter, et. al. of several of our Orders relating to the provision of transit service by SCE&G. All of the Orders appealed from appear under our Docket No. 92-023-R.

The Court noted with interest the language appearing in several Commission Orders, most notably, in Order Nos. 92-781 and 92-929, relating to the relationship between the transit service and SCE&G's electric franchise. The Court noted with interest that the Commission has pointed out on several occasions that the Company's franchise to provide coach service is inseparable from its electric franchise, based on the provisions of State ex rel. Daniel, Attorney General v. Broad River Power Company, et. al., 153 S.E. 537 (S.C., 1929). The Court noted in its May 10, 1994 Order remanding these matters to the Commission that, in its

opinion, the Commission had failed to explicate in precise terms whether or not SCE&G is entitled to a compensatory rate, and therefore, a compensatory rate of return. Further, the Court stated the Commission does not explain, if it does not believe that the Company is entitled to a compensatory rate, and therefore, a compensatory rate of return, whether or not the Commission took fully into consideration the financial condition of SCE&G as a whole, including its electric and gas franchises. The Circuit Court stated that it believed that further explication of these matters is necessary before the Court can rule on the merits of the appeal. Accordingly, the Court remanded all appeals to the Public Service Commission for the limited purpose of answering two questions:

1. Do the Commission decisions allow SCE&G a compensatory rate, and therefore, a compensatory rate of return?
2. If the Commission did not allow SCE&G a compensatory rate, and therefore, a compensatory rate of return, did the Commission take into account the financial condition of SCE&G as a whole, including the electric and gas franchises of the Company?

The Commission shall now proceed to explicate further its answers to the above-stated questions. With regard to the first question as to whether or not the Commission decisions allowed SCE&G a compensatory rate, and therefore, a compensatory rate of return, the answer must be negative. Indeed, the Commission did not grant SCE&G either a compensatory rate, or a compensatory rate of return, simply because the Company did not request it. The testimony on cross-examination of Company witness Bruce Kenyon at

Tr. Vol. 6 at 70 points this out.

(Q): ...You're not asking for a positive rate of return on your transit operations?

(A): At this time.

(Q): You're not, all right, sir.

(See also generally the testimony of Jimmy Addison, Tr. Vol. 7 at 18.) Therefore, the answer to the first question is negative, i.e. the Commission did not grant SCE&G a compensatory rate, nor a compensatory rate of return, because neither were requested.

With regard to the second question as to whether or not the Commission took into the account the financial condition of SCE&G as a whole, including the electric & gas franchises of the Company, this question must be answered in the affirmative. The Broad River case as stated above certainly requires a view of the financial situation of the whole Company. In this regard, two witnesses were presented in the proceeding which were relevant to this question. Commission Staff witness Maria Walker and Company witness Bruce Kenyon.

Walker was specifically asked about the Company's financial health as a whole on cross-examination by Women's Shelter Attorney Robert Guild. See Tr. Vol. 15 at 69-71. Further, Walker presented two relevant exhibits. (See Hearing Exhibit 19, Commission Staff Accounting Exhibits A-3 and A-4, pp. 13 and 14.) Walker testified that SCE&G experienced a positive net income during the test year, based on the Company's Consolidated Statement of Income and Retained Earnings for the year ended December 31, 1991. This was

delineated as Exhibit A-3, but was also attached to the Company's Application. Walker also sponsored Exhibit A-4, which was SCE&G's consolidated balance sheet as of December 31, 1991.

Kenyon was asked generally about the financial health of SCANA Corporation and SCE&G. Kenyon stated that the Company is "basically in good shape." Tr. Vol. 5 at 63. Further, Kenyon stated upon questioning that if he were to go to the standard places where people evaluate stocks, such as Value Line, that the Company was in good shape, and Kenyon answered in the affirmative once again. Kenyon also stated that this was true, despite the fact that the Company was losing several million dollars on its transit operations. See, Tr. Vol. 5 at 64.

The Broad River case states that "the nature of the corporate charter, the franchise, and the operation show an inseparability of services and the acceptance of the charter constitutes a contract between the state and the corporation." 153 S.E. at 548. Further, the Court stated in that case that the exercise of the electric light and power privilege, only upon the condition that the electric railway service be furnished is inescapable, and that the entire company must be examined when examining the operation of the street electric railway system. Thus, the electric and gas portions of the Company's business are inseparable from the bus portion of the Company. Clearly, the Commission examined and took into consideration the entire financial condition of the Company in reaching its decision on the bus case, based on the substantial evidence of record. Certainly, a loss in the bus portion of the

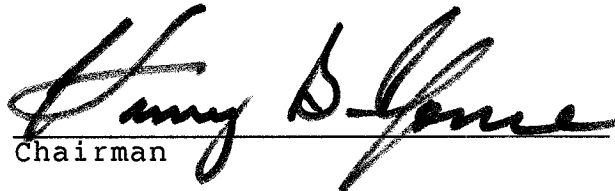
franchise is permissible under the tenets of the Broad River case, once the Commission has examined the financial condition of the Company as a whole.

Further, as stated in our Order No. 94-120, the Commission herein takes up the rehearing and/or reconsideration request of SCE&G in which the Company had requested a Declaratory Order stating that the transit system should be examined on a stand alone basis, i.e. the Company has a right to a reasonable rate of return on the transit operations standing alone. The Commission originally held in Order No. 93-1148 that this Petition for Declaratory Order should be denied based on the Broad River case as stated above, Broad River Power Company v. South Carolina ex rel. Daniel, 281 U.S. 537 (1930), City of Columbia v. Tatum, 174 S.C. 366, 177 S.E. 541 (1934), and S.C. Code Ann., §58-27-120 (1976), as amended. The Commission believes that its discussion above answers the question and that the Request for Reconsideration of our position in Order No. 93-1148 must be denied. The Broad River Power cases and the statute above simply allow no other conclusion but that all of the areas of service of SCE&G are inextricably linked, and that the transit system simply may not be considered on a stand alone basis. Therefore, the reconsideration request on the Petition for Declaratory Order must be denied pursuant to this reasoning.


The Commission trusts that this holding will aid the Circuit Court in its consideration of the appeals of the Commission's decisions in this matter.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)